



STANDARD CONCESSION AGREEMENT

No. UNASSIGNED

IDPR Name and Address: Division of Operations
Idaho Department of Parks and Recreation
PO Box 83720
Boise ID 83720-0065

Concessionaire Name and Address: TBD
Street
City, State and Zip Code

Term: Commencement: January 1, 2016
Expiration: December 31, 2025

Concession Location: **Harriman State Park of Idaho**. For specific location of Concession Premises see Attachment B.

Required Dates of Operation: Friday prior to Memorial Day to November 1, annually.

Rent/Fees: Annual rent is _____ percent (___%) of annual gross receipts. See Section 7 of Attachment A. and Section 5 of Attachment C. The agreed to percentage of annual gross receipts is due twice per year; on September 1st and on or before December 15th annually.

Concessionaire is also responsible for paying 7.6% of taxes levied on 2500 acres, annually to Fremont County, for property taxes applicable to the Premises utilized (190 acres). See Section 12 of Attachment C.

Agreement: IDPR, in consideration of the rent paid and the covenants, conditions and restrictions hereinafter set forth in this Agreement (including all Attachments), does hereby grants to Concessionaire and Concessionaire accepts from IDPR, the privilege to use and occupy the designated Premises for the purpose of providing the required and optional concession services and facilities as set forth in this Agreement and in Attachment C, *Special Terms and Conditions*.

Liability Insurance: See Section 12, Attachment A.

Index: DATA PAGE
SIGNATURE PAGE

ATTACHMENT A – GENERAL TERMS AND CONDITIONS
ATTACHMENT B – CONCESSION PREMISES
ATTACHMENT C – SPECIAL TERMS AND CONDITIONS
ATTACHMENT D – GROSS RECEIPTS REPORTING FORM

This Agreement, including the Data Page, Signature Page and all Attachments (which are incorporated herein in their entirety) is made and entered into by and between IDPR and Concessionaire.

LESSOR SIGNATURE

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

SIGNED: IDAHO DEPARTMENT OF PARKS AND RECREATION

BY: David Langhorst, its Director

State of Idaho)
 :s
County of Ada)

On this _____ day of _____, in the year _____, before me, a Notary Public in and for said State, personally appeared DAVID LANGHORST, known to me to be the director of the Idaho Department of Parks and Recreation, that executed the within instrument, and acknowledged to me that the Idaho Department of Parks and Recreation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public for IDPR of Idaho
Commission expires:

CONCESSIONAIRE SIGNATURES

By signing, Concessionaire/s verify receipt, review, and acceptance of all attachments and terms and conditions.

x _____ x _____
(Concessionaire) (Concessionaire)

STATE OF _____)
 :s
COUNTY OF _____)

On this _____ day of _____, in the year _____, before me, a Notary Public in and for said State, personally appeared _____
_____ known to me to be the person(s) who executed the instrument as Lessee, and acknowledged to me that such person(s) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Notary Public
Commission expires:

1. Definitions.

1.1 Agreement. This written agreement, including the Agreement Data Page, the Signature page, Attachment A, *General Terms and Conditions*, Attachment B, *Concession Premises*, and Attachment C, *Special Terms and Conditions*.

1.1.1 Incorporation of Plans and Agreements. The term "Agreement" incorporates by reference any concession plan, park master plan, lease with the United States or other Park landowner, and/or management agreement for the Park, as each is amended from time to time, and each of which is incorporated by reference into this Agreement.

1.2 Concession. The grant of the right by IDPR to use the Premises to undertake and profit by a specified activity, and any and all business activities and commercial transactions undertaken by Concessionaire on the Premises..

1.3 Concessionaire. The person or entity to which concession rights are granted by this agreement.

1.4 Improvements. Buildings, structures, fixtures, appliances, sidewalks, landscaping, docks, pilings, or other additions to the Premises, whether permanent, semi-permanent, or short-term. For the purposes of this agreement, fixtures shall include all windows, doors, awnings and all apparatus, equipment, or articles used to supply heat, gas, air conditioning, water, light, power, refrigeration, cooking, and ventilation that is physically attached to and an integral part of building or improvements existing upon the Premises.

1.5 IDPR. The Idaho Department of Recreation, a department of IDPR of Idaho, overseen and administered by the Idaho Park and Recreation Board.

1.6 Premises. The real property described in Attachment "B" upon which the rights granted by this Agreement may be exercised.

2. Authority. IDPR is authorized by Idaho Code § 67-4204 to grant concessions to proper and desirable parties to provide places of refreshment or to provide recreational facilities within state parks. IDAPA 26.01.20.650 provides that no "person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the department without written permission or permit from the [Idaho Park and Recreation Board]."

3. Operations. Concessionaire shall provide the required facilities and services each year of the agreement during dates specified on the data page.

- 3.1** Concessionaire is encouraged to be open for service before and after the above dates to better service park visitors, provided, that concession operations occurring outside the dates specified on the data page require approval of the Park Manager. IDPR reserves the right to require changes in the dates and times of required and optional services to ensure adequate service to the public and avoid conflict with other authorized uses occurring within the Park. Concessionaire shall provide IDPR with an operation schedule indicating times of operation.
- 3.2** In the event of adverse weather, or other adverse operating conditions, the Park Manager may permit or require the Concessionaire to close the facilities and services at any time during the term of this agreement. However, nothing herein shall excuse Concessionaire from payment of the annual rental.
- 3.3** Concessionaire, its employees and representatives shall conduct themselves in such a manner as to promote a positive image for the concession business, the Park and IDPR.
- 3.4** Concessionaire shall keep the Premises in a clean and sanitary condition at all times.
- 3.5** IDPR may require changes in Concessionaire's operations when, in IDPR's discretion, such changes are necessary to protect Park resources, to protect the health, safety, and welfare of Park visitors, or to avoid interference with IDPR's operation or maintenance of the Park.
- 4. Premises.** Concessionaire's operations shall be limited to the Premises identified in Attachment B. Within the designated Premises Concessionaire shall have the exclusive privilege of providing the specified concession services and facilities.
- 4.1 Concessions Outside Premises.** Nothing herein shall be construed as granting to Concessionaire the privilege of providing concession services and facilities on any state park lands outside the Premises, and IDPR reserves the right to grant concession privileges to other persons on those portions of the subject state park that are outside the Premises; whether or not those concession services and facilities are similar to those operated by Concessionaire, provided, that in the event IDPR determines to grant concession privileges in those portions of the subject state park that are outside the Premises and similar to those required services and facilities identified in Exhibit B, then Concessionaire shall have the right of first refusal for any such concession agreement offered by IDPR under such terms and conditions as IDPR may then prescribe.
- 4.2 No Right of Exclusion.** Concessionaire acknowledges that the Concession Premises are State Park lands open to public use and that IDPR reserves the right to authorize others to use the Concession Premises so long as such uses do not unreasonably interfere with Concessionaire's business operations.

4.3 As-Is. Concessionaire accepts the Premises in its present condition with all faults or hazards, whether patent or latent, and without warranties or covenants, express or implied, regarding the suitability of the Premises for operating purposes. Concessionaire acknowledges that IDPR shall have no duty to maintain, repair, or improve the Premises or otherwise make them suitable for Concessionaire's use. If any portion of the Premises is destroyed, IDPR shall have no obligation to replace or restore such portion of the Premises.

5. Term. The term of this agreement shall be specified on the Data Page.

5.1 Renewal. IDPR does not grant Concessionaire the right to automatically renew this agreement for an additional period of time. However, if IDPR, at the expiration of this agreement, desires to lease the Premises again, and if IDPR, in its sole discretion, concludes that Concessionaire's performance of this Agreement has been satisfactory, and Concessionaire is not in default or breach as set forth in Section 14 of this agreement, then IDPR may, but is not required to, grant Concessionaire the first right to accept a new agreement under such terms and conditions as IDPR may then prescribe and under the following conditions.

5.1.1 Concessionaire shall first notify IDPR in writing of its desire to renew the agreement sixty (60) days prior to its expiration. If IDPR desires to renew this agreement, it shall notify the Concessionaire in writing of the terms and conditions that IDPR may then desire to prescribe. Mailing to the last known address of Concessionaire shall constitute notification to Concessionaire. Concessionaire shall then have thirty (30) days from the date of that mailing to notify IDPR of its acceptance of the terms and conditions prescribed by IDPR. Acceptance shall be complete only if received by IDPR in writing and within the time prescribed.

5.1.2 Section 4.1 shall not apply in the event IDPR terminates this Agreement for cause or in the event of early termination of this Agreement by Concessionaire.

5.1.3 Section 4.1 shall not apply to any concession agreement offered by IDPR more than twelve (12) months after the expiration of this Agreement.

5.2 Holdover. If Concessionaire holds over after the expiration of the term of this agreement with the express or implied consent of IDPR, such holding over shall be deemed to be a month-to-month tenancy of the Premises otherwise subject to the terms of this Agreement. During such month-to-month tenancy, Concessionaire shall pay monthly rental in the amount of one-twelfth (1/12) the prior year's annual rental, as calculated pursuant to Section 6 herein, or fifteen percent (15%) of that month's gross receipts, whichever is greater.

- 6. Going Concern. Blue Sky, Business Values Of Concession Operations.** Concessionaire's rights and privileges are limited to those rights and privileges specifically granted in this Agreement and Concessionaire's business operations upon the Premises shall not, as between IDPR and Concessionaire, accrue any value for going concern, good will, blue sky, business values, trade name, or other intangible property.
- 7. Rental.** Concessionaire shall pay to IDPR each year during the term of this agreement that percentage (%) of gross receipts as specified on the Data Page. Payment for each year shall be made on or before the date specified on the Data Page. Payment shall be made to the order of the Idaho Department of Parks and Recreation, P.O. Box 83720, Boise, Idaho 83720-0065.
- 7.1 Late payments.** Late Payments shall accrue interest at the legal rate of interest as set by the State Treasurer for the accrual of interest on judgments until paid. Payments that are more than thirty (30) days late will constitute a breach of this agreement absent a written addendum to this agreement signed by both parties.
- 7.2 Reporting of Gross Receipts.** Gross Receipts shall be reported to IDPR on the attached *IDPR Concessionaire Gross Receipts Reporting Form* (Attachment D). The Form shall be submitted to IDPR at the time of each payment. The Form shall be accompanied by an appropriate certification that all gross receipts during the yearly accounting period have been duly and properly reported to IDPR
- 7.3 Definition of Gross Receipts.** Gross receipts, as used in this agreement, shall include all monies and anything else of value received by Concessionaire from the sale, rental, or provision of goods, services, or facilities, or from any other business whatsoever conducted by Lessee on the Premises, whether such goods, services and activities are required by this Agreement or optional, excepting an allowance of deductions for sales or excise taxes imposed by any governmental entity and collected by Concessionaire.
- 8. Record-Keeping.** Concessionaire shall keep true and accurate books and records showing all of its business transactions in separate records of account for the concession in a manner acceptable to IDPR. IDPR shall have the right to examine daily sales records kept on the Premises during regular business hours of Concessionaire; provided that such examination does not unreasonably interfere with Concessionaire's operation of the concession. IDPR shall have the right to examine all other books and records, including but not limited to inventory records and certified State of Idaho Sales Tax Return Records, provided that IDPR shall treat such records as confidential and not divulge them to third parties except in the event of litigation. IDPR shall examine books and records only upon reasonable notice and only at such times as will not unreasonably interfere with Concessionaire's operation of the concession. IDPR further shall have the right to examine all such

books and records at any time within two (2) years of termination or expiration of this agreement, or until such time that a final audit is concluded as to Concessionaire's business under this agreement, whichever event occurs first.

8.1 Concessionaire shall install and maintain inventory, bookkeeping and accounting methods, and methods of collection of monies, which shall permit IDPR to accurately compute the gross revenue of Concessionaire.

8.2 Concessionaire shall, at its own expense, install and maintain such cash register equipment as will provide a continuous registering tape and show sales breakdown as to major categories of items sold. Concessionaire shall also maintain at its own expense a sales journal, cash disbursement journal and general ledger.

9. Quality of Goods and Services. Concessionaire shall engage in best business practices and strive to provide high-quality goods and services. All food items and food service, if any, provided by Concessionaire shall comply with the Rules of the Idaho Department of Health and Welfare governing Food Safety and Sanitation Standards for Food Establishments as enforced by the applicable municipal government or District Health Department. Copies of all permit-licenses and inspection reports issued by a municipal government or District Health Department shall be made available to the Park Manager. IDPR shall have the right to prohibit the sale of any item or to order the improvement of any service or equipment not satisfying the above requirements. IDPR reserves the right to impose reasonable park regulations on the sale or consumption of alcohol not in conflict with the rules administered by the Alcohol Control Division of Idaho State Police.

9.1 The Concessionaire shall serve the public courteously and efficiently. All services should serve to enhance IDPR's mission of improving the quality of life through outdoor recreation and resource stewardship. The Concessionaire shall cooperate with Park staff in providing interpretative service to the public and in promoting the Park and its programs. The Concessionaire shall present a positive image of the Park and provide accurate information of the Park and its programs. These requirements also apply to any employee, agent or representative of the Concessionaire.

9.2 The Concessionaire shall not employ or retain in its services, or permit to remain upon the Concession Premises, any person declared by IDPR to be unfit for such employment or otherwise objectionable. The Concessionaire and its employees are expected to maintain high standards of grooming and cleanliness, to the satisfaction of IDPR.

10. Control of Rates and Charges. Concessionaire agrees that any fees and all rates and prices charged by Concessionaire for goods, beverages, food and services furnished or sold to the public may be subject to review and approval by IDPR. Concessionaire shall, by May 1 of each year,

submit to IDPR for approval a list of the fees, rates and prices proposed for the following operating season. Such submission shall also include, but is not limited to, ounces per serving, fat content of meat, and any other information necessary to determine the quality and quantity of goods, beverages, food and services furnished or sold to the public. Prices charged by Concessionaire shall be reasonably related to the quality and quantity of the items sold. If IDPR determines that any price is not so related, IDPR may order that the price be modified. IDPR may not require a modification in price that would prevent Concessionaire from realizing a reasonable profit on items sold. Concessionaire shall keep a schedule for such fees, rates or prices posted at all times in a conspicuous place on the Premises.

- 11, Improvements.** Those improvements, if any, included with the Premises are identified in Attachment B, *Description of Premises*. Concessionaire shall, at its own expense, maintain the Premises and all improvements thereon in clean, healthful and safe condition, and in accordance with applicable state, county and federal laws and regulations, and in a condition comparable to other improvements within the Park. If, after reasonable notice, Concessionaire fails to undertake repairs necessary to maintain such conditions, IDPR shall have the right to perform such maintenance or repairs and Concessionaire shall promptly reimburse IDPR for the cost thereof, provided that IDPR shall first give Concessionaire fifteen (15) days written notice of its intention to perform such maintenance or repairs to enable Concessionaire to perform such maintenance or repairs at its own expense.

11.1 Construction and Modification of Improvements. If the Concessionaire should undertake at its own expense any construction, alterations, or modification of the Premises, the Concessionaire shall submit, for the review and prior written approval of IDPR, all plans, drawings, and specifications. IDPR shall approve, reject, or require modifications of such plans within forty-five (45) days after submission of those plans to IDPR. Unless otherwise agreed to in writing by IDPR prior to construction or modification, Concessionaire shall be responsible for all costs associated with the construction, alteration, or modification of improvements.

11.2 Emergency Repairs. In the event of any emergency such as vandalism, fire, wind, flooding, hail or other act of God, which threatens damage to the Premises or harm to the public, IDPR may immediately act to stop such emergencies and mitigate any potential damage to the Premises. IDPR shall notify Concessionaire of any emergency circumstances, action or repair and shall request that Concessionaire make further repairs necessitated by such emergency. Concessionaire shall reimburse IDPR for all reasonable repairs made pursuant to this emergency provision.

11.3 Liens. Concessionaire shall not allow or suffer any liens of any kind or nature to be effected on or enforced against the Premises, including, but not limited to, any mechanics' liens or material suppliers' liens for any work done or materials furnished on the Premises at Concessionaire's instance or request. Concessionaire shall ensure that full payment is made for any and all materials joined or affixed to the Premises pursuant to this Agreement for any and all persons who perform labor on the land.

12. Insurance. Concessionaire shall obtain and maintain insurance at its own expense as required herein for the duration of this Agreement, and comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. Concessionaire shall provide certificates of insurance or certified endorsements as applicable for the insurance required.

12.1 All insurance, except for Workers Compensation shall be endorsed to name the State of Idaho and the Idaho Department of Parks and Recreation as Additional Insured.

12.2 All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the state.

12.3 If any of the liability insurance required for this agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of this agreement for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this agreement, or twenty-four-months "prior acts" coverage is provided. Concessionaire will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

12.4 By requiring insurance herein, IDPR does not represent that coverage and limits will necessarily be adequate to protect the Concessionaire, and such coverage and limits shall not be deemed as a limitation on the Concessionaire's liability under the indemnities granted to the state.

12.5 Concessionaire shall maintain insurance in amounts not less than the following:

12.5.1 Commercial General Liability (CGL) with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying

insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

12.5.2 Automobile Liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Auto is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

12.5.3 Workers Compensation Insurance in amounts as required by statute in all states in which the contractor performs work, and Employers' Liability with a limit of \$100,000 Bodily Injury by Accident-each Accident, \$100,000 Bodily Injury by disease-each employee, \$500,000 Bodily Injury by Disease-policy limit.

12.5.4 Business property insurance covering all improvements, fixtures, and personal property of Concessionaire upon the Concession Premises. Policy limit shall be sufficient to cover the value of all Concessionaire-owned property upon the Concession Premises, and shall cover all risks to such property unless specifically and explicitly excluded.

13. Hold Harmless Agreement. Concessionaire shall indemnify, defend and save harmless the State, its officers, agents and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of Concessionaire's negligent or wrongful performance, acts or omissions under this Agreement or Concessionaire's failure to comply with any state or federal statute, law, regulation or rule. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.

14. Assignments or Sale of Interest. Concessionaire and/or any person or entity that owns a "controlling interest" as herein defined in Concessionaire's ownership (collectively defined as the Concessionaire for the purpose of this section), shall not assign, sublease, or otherwise sell or transfer responsibilities under this agreement or the concession operations authorized hereunder, or sell, or otherwise assign or transfer (including but not limited to mergers, consolidations, reorganizations or other business combinations) a controlling interest in such operations, this agreement, or controlling interest in Concessionaire's ownership as defined herein, without the prior written consent of IDPR. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Agreement for which the Agreement may be terminated immediately by IDPR without regard to the procedures for termination set forth above, and IDPR

shall not be obligated to recognize any right of any person or entity claiming an interest in this Agreement or claiming the right to own or operate the concession operations authorized hereunder.

- 11.1** Concessionaire shall advise the person or entity proposing to enter into a transaction described above that IDPR shall be notified and the proposed transaction is subject to review and approval by IDPR. Concessionaire shall request in writing IDPR's approval of the proposed transaction and shall promptly provide IDPR all relevant documents related to the transaction, including all information necessary for IDPR to evaluate the fitness and ability of the prospective Concessionaire to carry out the terms of this Agreement in a manner satisfactory to IDPR.
- 14.2** IDPR in exercising its discretionary authority herein shall, among other matters, take into consideration the management qualifications of any individual or entity that would obtain an interest in facilities or services authorized hereunder, the experience of any such individual or entity with similar operations, and the ability of any such individual or entity to operate the concession authorized hereunder in the public interest under the regulation of IDPR.
- 14.3** For the purposes of this section, the term "controlling interest" in Concessionaire's ownership shall mean, in the instance where Concessionaire is a corporation or limited liability company, an interest beneficial or otherwise of sufficient outstanding voting securities or capital of Concessionaire so as to permit exercise of substantial managerial influence over the operations of the Concessionaire; and, in the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of Concessionaire sufficient to permit substantial managerial influence over the operations of Concessionaire shall constitute a controlling interest for purposes of this Agreement.
- 14.4** No mortgage shall be executed and no bonds or other evidence of interest in, or indebtedness upon the assets or proposed assets of Concessionaire, including this agreement, shall be issued except for the purpose of installing, enlarging, or improving facilities and equipment for the accommodation of the public upon the Premises and then only with the prior written consent from IDPR. In the event of default on such mortgage, encumbrance or other indebtedness or of other assignment or transfer, the creditor or any assignee thereof shall succeed to the interest of Concessionaire in such assets, if any, but shall not thereby acquire any operating right or privilege in or to the operation of the concession, or the Premises, pursuant to this Agreement, without the express prior written consent of IDPR.
- 14.5** In the event that approved improvements are financed by any outside investors, Concessionaire shall disclose the identity of said investors to IDPR.

14.6 In the event that IDPR shall approve assignment of this Agreement to any other person or entity, Concessionaire shall pay to IDPR an amount equivalent to ten percent (10%) of the assignment price, minus the amount paid by the assignee for any buildings, improvements, appurtenances, and fixtures owned by Concessionaire existing upon the Premises.

15. Termination for Breach.

15.1 Violations. Each term and condition of this Agreement is material, and default as to, or breach of any, of these terms by Concessionaire shall be grounds for termination of the entire agreement by IDPR. Any material violation by Concessionaire of any rule or regulation now in force or hereafter adopted by the Board, shall be grounds for termination of this Agreement. The determination of whether a violation constitutes a material violation subjecting this Agreement to termination shall rest solely in the discretion of the IDPR.

15.1.1 A material violation of this Agreement shall be deemed to occur if Concessionaire files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or if involuntary proceedings under any bankruptcy act or insolvency act be instituted against Concessionaire or if a trustee or receiver is appointed of any property of Concessionaire.

15.2 Violation of Land and Water Conservation Fund Act Requirements. All concession operations must comply with the provisions of the Land and Water Conservation Fund Act (LWCF) and implementing guidelines (36 Code Federal Regulations 59), including, but not limited to, provisions requiring the leased area to be maintained as a public outdoor recreation facility, not as a private area; the provision requiring fees to be competitive with fees for similar private facilities; and compliance with all Civil Rights and accessibility legislation (e.g., Title VI of Civil Rights Act, Section 504 of Rehabilitation Act, and Americans with Disabilities Act), with such compliance indicated by signs posted in visible public areas, statements in public information brochures, etc. Noncompliance with LWCF requirements shall be deemed a material violation of this Agreement and cause for termination.

15.3 Notice of Violation. IDPR shall provide written notice to Concessionaire of any Agreement or rule violation and shall allow Concessionaire thirty (30) days from service of the notice to cure the violation.

15.4 Notice of Termination. Agreement or rule violations which have not been cured within thirty (30) days of receipt of the notice of violation shall subject the Agreement to termination. Notice of termination shall be in writing and shall be effective upon service.

15.5 Administrative Fees. Prior to the termination, Concessionaire may elect to pay the Department's administrative costs associated with enforcing the terms of this Agreement, and the IDPR may agree to accept payment of such costs in lieu of termination for each day that such violation went uncorrected over and beyond the thirty day grace period provided in section 14.3 of this Agreement. IDPR and Concessionaire agree that such administrative costs are fixed at fifty dollars (\$50) for each day that the violation goes uncorrected, up to a maximum of one thousand, five hundred dollars (\$1,500).

15.6 Reinstatement. Not later than thirty (30) days following the termination of this Agreement for cause, the Concessionaire may submit to the IDPR a written request for reinstatement setting forth good cause why the Agreement should be reinstated. At the Director's discretion, the Agreement may be reinstated upon the payment of a reinstatement fee of four hundred dollars (\$400), and upon such other terms and conditions as the Director deems appropriate.

15.7 Concessionaire may terminate this Agreement at any time by giving one year written notice to IDPR of its intent to terminate.

16. Concessionaire's Obligations and Rights Upon Termination or Expiration. At the expiration or early termination of this Agreement, Concessionaire shall, within thirty (30) days thereafter, remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR all personal property belonging to Concessionaire, and restore the Premises to as good a condition as the same were in at the date of this agreement. If removal and restoration is not completed within thirty (30) days after termination, IDPR may, at its election, perform the work and bill Concessionaire for the costs thereof. Concessionaire shall pay such bill within thirty (30) days of receipt.

16.1 Payment of Rent Due. Upon termination, the annual rent for the year in which termination occurs (i.e., the specified percentage of gross receipts received up to the date of termination), as well as any unpaid annual rent from previous years, shall be considered at once due and payable by Concessionaire without notice by IDPR.

16.2 Improvements and Fixtures. Unless agreed otherwise in writing prior to construction of improvements by Concessionaire, upon expiration of this agreement or early termination of this agreement for cause, all improvements and fixtures constructed or installed by Concessionaire during the term of this Agreement shall be considered the property of IDPR, with no further compensation due to Concessionaire.

16.3 Option to Require Removal. At IDPR's option, Concessionaire shall, upon the expiration or termination of this Agreement, be required to remove from the Premises or otherwise dispose of in a manner satisfactory to IDPR, those improvements and fixtures constructed or installed by Concessionaire that are not acceptable to IDPR. If IDPR elects to require Concessionaire

to remove any improvements or fixtures, Concessionaire shall do so and restore the Premises to as good a condition as the same were in at the date of this agreement. If removal and restoration is not completed within thirty (30) days after termination, IDPR may, at its election, perform the work and bill Concessionaire for the costs thereof.

Concessionaire shall pay such bill within thirty (30) days of receipt.

16.4 Bankruptcy. If, upon bankruptcy or insolvency of Concessionaire, IDPR does not elect to terminate this agreement pursuant to Section 14.1.1, any use, assignment, or disposition of buildings, improvements, appurtenances, and fixtures existing upon the CONCESSION PREMISES by a trustee or receiver shall be subject to the terms of this agreement.

16.5 Going Concern. Blue Sky, Business Values. Concessionaire waives any claim that it is entitled to compensation for going concern, good will, blue sky, business values, trade name, or other intangible property upon expiration or termination of this Agreement, regardless of whether IDPR intends to continue similar business operations upon the Premises or offer an opportunity to a successor concessionaire to operate a similar business upon the Premises.

17. Repair and Maintenance Fund. Concessionaire shall maintain a repair and maintenance fund into which one percent (1%) of Concessionaire's annual gross revenue shall be deposited. This fund shall remain Concessionaire's property, shall be accounted for separately from Concessionaire's other funds, and may only be spent with the consent and approval of IDPR, and will be accessible to IDPR on demand in the event Concessionaire fails to maintain the Premises as specified in this Agreement.

18. Equipment. Except as otherwise specified in the Special Term and Conditions, Concessionaire at its own expense shall provide the Premises with all equipment necessary for the services required under this agreement. The quality and maintenance of such equipment shall comply with all applicable laws and regulations, including but not limited to the rules of the Idaho Department of Health and Welfare governing Food Safety and Sanitation Standards for Food Establishments.

19. Signs and Advertising. Concessionaire shall not erect any sign on the Premises or in the vicinity thereof, without obtaining the prior written approval of IDPR. No signs containing brand names or products sold at the concession are to be displayed on the exterior of any building without the prior written approval of IDPR. Concessionaire shall not advertise the sale of alcoholic beverage without the prior written approval of IDPR.

20. Business Name Any assumed or fictional business name used by Concessionaire in conjunction with its concession operations upon the Premises shall be subject to the approval of IDPR.

- 21. Licenses And Permits.** Concessionaire shall obtain and pay for all permits or licenses that may be required for the operation of the concession.
- 22. Compliance With Applicable Laws.** Concessionaire shall at all times comply with all applicable laws, ordinances, and regulations of IDPR, the State of Idaho, the United States, as well as any applicable county or city ordinances. Violation of such laws, ordinances, or regulations may be considered as cause for termination of this agreement.
- 23. Utilities.** Concessionaire shall at its own expense be responsible for the extension, hookup, and metering of all utilities used in connection with the Premises where separate metering is available. All new utilities, including electrical wiring, shall be installed underground. Concessionaire shall be responsible for the accrual and payment of all utility charges or fees, commencing seven days prior to the first open business day. The termination of this responsibility will occur seven (7) days after the close of the last business day.
- 23.1 IDPR-Supplied Water.** If IDPR supplies water to the Premises, it will do so without charge, provided that such supply shall be for the term of this agreement only. IDPR shall not be responsible for improvement of the water supply beyond that quantity and quality existing as of the date of this agreement, and IDPR shall not be liable for any damages due to the failure in the supply of water. IDPR shall give reasonable notice to Concessionaire of any temporary discontinuance of the water supply due to repair or maintenance.
- 23.2 Trash Service.** IDPR will haul normal concession-generated garbage during regularly scheduled maintenance runs if it is properly bagged and placed in trash collector.
- 24. Right To Access.** IDPR shall have access to the Premises and to each part thereof during the regular business hours of Concessionaire for the purpose of inspecting the Premises and daily sales records.
- Concessionaire shall have the right at all times to transverse Park property on a route approved by IDPR to get to and from the Premises in order to keep the Premises open during regularly scheduled business hours.
- 25. Taxes.** Concessionaire shall pay all taxes on personal property belonging to Concessionaire located on the Premises. Concessionaire shall pay all sales and other taxes levied against the operation of the concession. Concessionaire shall pay all taxes or assessments or charges, which at anytime may be lawfully levied upon any interest in this agreement or any possessory right that Concessionaire may have in or to the Premises. Concessionaire shall provide IDPR with a valid tax identification number.

- 26. Waiver of Agreement Terms.** No waiver by either party at any time of any of the terms, conditions or covenants of this agreement shall be deemed a waiver at any time thereafter of the same or any other term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay or failure by IDPR to reenter the Premises or to exercise any right, power or privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option held by IDPR, or be construed as a waiver of such default or relinquishment of any rights herein. No option, right, power, remedy or privilege of IDPR shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given to IDPR by this concession agreement shall be deemed cumulative.
- 27. Marketing and Media:** IDPR and Concessionaire will coordinate their media and marketing activities. Such coordination shall address but shall not be limited to the following: trade names, logos or marks, materials, websites, press releases, press outings and press conferences, logoed apparel and merchandise, and events. IDPR shall retain the right to reject any material inappropriate to the mission of IDPR. The Concessionaire shall have the right to use the park name and to reference materials published by IDPR in carrying out its marketing and media activities. The Concessionaire shall have the right to purchase and/or develop web domain names, names, and logos or marks in the commercial development the Concession. The Concessionaire and IDPR shall work diligently to protect the said names and marks in all their forms. The Concessionaire is authorized to make exclusive use of these names and marks for commercial purposes, i.e., logoed merchandise, 'official energy bar of...' type partnerships, etc., in conjunction with ongoing operation of approved activities as contained in the Concession agreement, and with written approval by IDPR, for development of products. Nothing in this section precludes the State of Idaho from the use of the names and logos for non-commercial purposes or for the production of pins or other memorabilia for State of Idaho activities. Upon termination of this Concession Agreement, domain names developed in this connection shall be available on the basis of first right of refusal for purchase by IDPR from the Concessionaire for the total amount of one dollar (\$1.00) for each domain name. Names and logos shall be available on the basis of first right of refusal for purchase by IDPR for their cost of development, but not more than \$1,000 each.
- 28. Concession Performance Review:** A performance review shall be conducted every year during the term of this contract to determine the Concessionaire's compliance with the Agreement provisions and to evaluate performance. During these reviews, visitor services and corresponding fees charged by the Concessionaire shall be reviewed and be subject to approval of IDPR. Revenue (e.g. rent) paid to IDPR shall also be reviewed, and such fees may be adjusted up or down by mutual agreement of both contracting parties.

- 29. IDPR Consent.** Whenever any action by Concessionaire requires IDPR's consent pursuant to a provision in this Agreement, IDPR's consent to such action shall be strictly construed to apply to the specific action to which such consent applied and not to imply consent to any similar or subsequent actions by Concessionaire or waiver of any rights provided to IDPR by this Agreement. Consent of IDPR to any action of Concessionaire must be explicit; no provision in this Agreement shall be construed to allow consent by omission.
- 30. Complete Statement of Terms.** No other understanding, whether oral or written, whether made prior to or contemporaneously with this Agreement, shall be deemed to enlarge, limit, or otherwise affect the operation of this Agreement. All rights of Concessionaire and the legal relations of IDPR and Concessionaire are defined herein and no rights not specifically identified herein are intended.
- 31. Modification.** Notwithstanding any of the provisions hereof; the parties hereinafter, by mutual consent, may agree to written modifications or additions to this agreement, subject to approval of the Park and Recreation Board. No modification, release, discharge, change, or waiver of any provision hereof shall be of any force, effect, or value unless it is in writing and signed by both parties to this Agreement. IDPR shall have the right to grant reasonable extensions of time to Concessionaire for any purpose, or for performance of any obligation of Concessionaire hereunder.
- 32. Severability.** If any term or provision of this Agreement is held by the courts to be illegal or in conflict with any existing law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be continued and enforced as if the invalid term or provision were not contained in this Agreement.
- 33. Officials, Agents, and Employees of IDPR Not Liable.** It is agreed by and between the Parties that in no event shall any official, officer, employee, or agent of the State of Idaho be in any way liable or responsible for any covenant or agreement contained in this Agreement, express or implied, nor for any statement, representation, or warranty made in or in any way connected with this Agreement or the Premises. In particular, and without limitation of the foregoing, no full-time or part-time agent or employee of the State of Idaho shall have any personal liability or responsibility under this Agreement, and the sole responsibility and liability for the performance of this Agreement and all of the provisions and covenants contained in this Agreement shall rest in and be vested with the State of Idaho.
- 34. Terms Binding Upon Successor.** All the terms, covenants, and conditions of this agreement shall inure to the benefit of and be binding upon the successors and assignees of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment set forth above.

- 35. Non-Discrimination.** Concessionaire and its employees shall not discriminate against any person because of race, gender, color, ancestry, national origin, or disability by refusing to furnish such person any accommodation, facilities, services, or privileges offered to or enjoyed by the general public. Nor shall Concessionaire or its employees publicize the accommodations, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability or the patronage of any person because of race, gender, religion, color, ancestry, national origin or disability.

In the performance of this agreement, Concessionaire shall not discriminate against any employee or applicant for employment because of race, gender, color, religion, national origin or disability. Concessionaire shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, gender, color, religion, ancestry, national origin or disability. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Concessionaire shall permit access to its records of employment, employment advertisement, application forms and other pertinent data and records by any agency of IDPR designated for the purpose of investigation to ascertain compliance with Title 67, Chapter 59, Idaho Code.

- 36. Time of the Essence.** Time is expressly declared to be of the essence in this Agreement.
- 37. Notices.** Any notice given under the terms of this Lease shall be deemed given and delivered when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party. Notices to Concessionaire shall be addressed to Concessionaire at the address designated in the Data Page of this Lease. Notices to IDPR shall be addressed to IDPR shall be addressed to IDPR at the address designated in the Data Page of this Lease.
- 38. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Idaho.
- 39. Special Terms and Conditions.** Attachment A sets forth the general terms and conditions applicable to all concessionaires. Attachment C sets for the Special Terms and Conditions applicable to the signatory Concessionaire. In the event of any conflict between the General Terms and Conditions in Attachment A, and the Special Terms and Conditions in Attachment C, the Special Terms and Conditions are deemed to be controlling.

Attachment B

Concession Premises

Location Description and Map

PARK: Harriman State Park of Idaho.

LOCATION DESCRIPTION: The concession premises, and approved trails, are located almost entirely within Harriman State Park of Idaho. A few of the intermediate trails leave the park and travel through US Forest Service property. All buildings, corrals, pasture and parking are within the park. The concession will be based out of the Horse Concession Barn located just west of the Ranch View parking lot. The building is wood sided, and has a loft and two main rooms; one for meeting guests and doing business, the other for storage and tack. A wooden, pole type, corral system is attached to the west side of the building and extends north. It can accommodate 30+ horses. Parking for guests is located within the Ranch View parking lot.

The approved Horse Pasture is located approximately a quarter mile north of the Horse Concession Barn (See yellow cross hatched area on map). It consists of 180 acres, entirely fenced (Drop down wire type) and has water available the entire operating season.

MAP: See attached.

Attachment C

Special Terms and Conditions

1. **REQUIRED SERVICES AND FACILITIES**

The Premises shall be used by the Concessionaire only to provide the required and options services described herein. The Concessionaire shall offer the following services:

- A. Guided Horseback Riding Services. (Trails to be approved by park manager)
- B. A safe educational, affordable and memorable experience with horses and wagons at Harriman State Park of Idaho visitors.
- C. Rides to focus on photography, birding, wildlife viewing, Ranch history, and geology.
- D. Specialty rides; livestock and wranglers to accommodate the filming of movies, documentaries and commercials.
- E. Hay and wagon rides.
- F. Assist with hosting media familiarization trips to maximize promotion of the park.
- G. Elk Bugling and viewing tours.

2. **OPTIONAL SERVICES:**

Additional services may be provided by the Concessionaire only upon approval of IDPR as given by written amendment to this Agreement. Such approval may be obtained by the Concessionaire through application in writing to the Park Manager. Concessionaire has first right to provide these optional services. However, if Concessionaire does not choose to provide any of the optional services within one (1) year of the effective date of this Agreement, or at any time chooses to discontinue offering any of the optional services, another concessionaire may be given permission to perform such services on a case-by-case basis as approved by the Park Manager.

- A. Dutch oven meals, trail meals, or equivalent;
- B. Sale of souvenirs, memorabilia, foods, foods, or beverages designed to enhance the visitor experience, excepting the sale of beverages in glass bottle, which is prohibited;
- C. Corporate outings;
- D. Work with park to create possible "package deals."

3. **OPERATIONS:** In addition to Page 1, REQUIRED DATES OF OPERATION and Section 3, OPERATIONS, of Attachment A, the following shall apply:

- A. In peak season, from June 15th through Labor Day Holiday weekend each year: Concession premises must be open, and staffed, at a minimum; six (6) days per week, 9 AM to 5 PM, and will include all weekends and holidays. Before June 15th and after Labor Day Weekend, through November 1st, concession operations must be open, and available for reservations. The Concessionaire has the option to operate, and staff premises, additional days and hours. Schedules for operations and staff contact information must be provided to the Park Manager.

- B. The Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof because of illness or injury occurring during concession operations. The Concessionaire shall cooperate fully with IDPR and law enforcement offices in the investigation if any accidental injury or death occurring on or from the concession premises, including a prompt report thereof to IDPR.

4. **PREMISES.** In addition to Section 4, Attachment A, the following shall apply:

- A. The Concession's actual operations shall be limited to the area marked as "Concession Premises" (herein referred to as the "Premises") in Attachment B, attached and incorporated by reference into this Agreement, and to the Park trails that are designated annually by IDPR within the Park for use by the Concessionaire, hereafter referred to as "Authorized Trails." The Authorized Trails are not included in the Premises but Concessionaire is granted permission to utilize Authorized Trails subject to the condition and understanding that the Concessionaire holds no exclusive right of use of the Authorized Trails and Concessionaire's use of Authorized Trails will not unreasonably interfere with the use of the same by others.
- B. Authorized Trails and areas of specific resource concerns are subject to annual review and may be changed in the sole discretion of IDPR. Authorized Trails and areas of specific resource concerns will be designated by IDPR at the twice-annual meetings described in Section 14 of this Attachment C.
- C. The Concessionaire will be responsible for providing necessary maintenance of Authorized Trails used by the Concessionaire in order to mitigate adverse impacts resulting from the operation of the Concession. Determination of adverse impacts to Authorized Trails rests in the sole discretion of IDPR.
- D. The Concessionaire will maintain Authorized Trails to U.S. Forest Service Trail Maintenance Level 2 standards as referenced in Harriman State Park of Idaho Trail Management Plan Appendix C, with the exception of Signage. Signage will remain the responsibility of IDPR.
- E. Authorized Trails will be maintained for near-primitive experience level. Maintenance activities to be performed include but are not limited to tread maintenance, limited brushing, logging out, slash removal and stump repair, and maintenance of drainage structures. Tread will be maintained for public safety. Logs or similar rustic structures may be provided at stream crossings, and will be drainage functional and not likely to fail.
- F. Condition surveys will be made by IDPR at least once every two (2) years to check for resource and trail drainage. Unsafe conditions will be assessed by IDPR and repaired annually by the Concessionaire.
- G. In the event of adverse weather, or other adverse operating conditions, the Park Manager may permit Concessionaire to close the basic facilities and services at any time during the term of this Agreement. However, nothing herein shall excuse Concessionaire from payment of the fees based upon the Gross Receipts collected to the time of such closure.
- H. The Concessionaire may use the Horse Concession Barn (see Attachment B) for storage and horse stabling.

5. **RENT/RENTAL:** Notwithstanding Page 1 RENT and Section 7 RENTAL of Attachment A:

- A. The Concessionaire will provide the concession services only to Park visitors who have paid the day use fee. It will be the responsibility of the Concessionaire to inform their clients that they must pay the Park's day use fee to the appropriate Park staff and that Concessionaire is not authorized to collect said fee for the Park.
- B. Notwithstanding any other provision contained herein, IDPR shall have the right to collect use fees from Park visitors in the amount determined by the Park Board for public use of the facilities provided at Harriman State Park of Idaho.
- C. Section 7. RENTAL, the last sentence is amended to read: "Payment shall be made to the order of the Idaho Dept. of Parks and Recreation and delivered to the park manager of Harriman State Park of Idaho, 3489 Green Canyon Rd, Island Park, ID 83429"

6. **HORSES, PASTURE AND GRAZING:** Concessionaire will have available approximately one hundred eighty (180) acres of pasture provided by IDPR for the purpose of horse grazing during each Operating Season ("Horse Pasture"), as designated in Attachment B attached hereto. Additionally, adjacent to the Sheep Barn, approximately ten (10) acres of pasture are available for Concessionaire wrangle horses ("Wrangle Pasture"), as designated in Attachment B

- A. Concessionaire may bring onto Park property no more livestock than is necessary to the operation of the Concession. The Concessionaire may not exceed a maximum of thirty-five (35) horses at any given time within the pastures provided by IDPR.
- B. The Concessionaire must adhere to established pasture rotation schedule as determined by IDPR for assigned pasture. No grazing is permitted on National Forest lands.
- C. Maintenance, repair and upkeep of all fences required for the control of Concessionaire horses are the responsibility of the Concessionaire. The maintenance of horse fencing must be to the satisfaction of IDPR. The Horse Pasture as well as fence maintenance must be briefly shared with a cattle-grazing lessee for a short period in mid-June and again during September.
- D. Turn-in and Turn-out: In any given year, horses are not permitted on the Park more than ten (7) days prior to the established opening date of the Concession, and horses must be removed within five (5) days after the established closing date of the Concession. Exceptions are to be approved in writing by the Park Manager.
- E. The Concessionaire will notify IDPR forty-eight (48) hours in advance of when stock will be arriving at the Park so that IDPR can verify the Premises are in acceptable condition and that a representative of IDPR can be scheduled to count the livestock..
- F. Concessionaire will maintain proper care of their stock, Veterinarian checks and generally accepted standards of hoof care, worming, wound treatment, and nutrition will be adhered to at all times. Any

horse observed with obvious health problems must be removed from the Park within twelve (12) hours.

- G. The Concessionaire will be responsible for providing security for all horses and equipment on Park property.
- H. Horses are not permitted to remain unattended in areas other than designated pastures or holding facilities.
- I. Concessionaire shall not allow Concessionaire's livestock to graze or run at-large over any lands of IDPR other than the Horse Pasture or Wrangle Pasture.
- J. The grazing privileges granted herein are personal to Concessionaire and granted solely for use in conjunction with the provision of the required and optional concession services described herein, and Concessionaire shall not sublease, assign, or otherwise authorize any other person to graze or run livestock over IDPR's lands.
- J. Manure left within the Railroad Ranch Historic Site (See Attachment B Map inset labeled "Railroad Ranch"), by loose stock, must be immediately removed by Concessionaire.
- K. Vehicles of the Concessionaire and its employees may not travel beyond the South Dude Barn parking area unless provided with written permission by IDPR.
- L. The Concessionaire is responsible for the safety of the public in conjunction with the horses at all times.
- M. **Grazing Management Plan**

Concessionaire will provide, and comply with a Grazing Management Plan. Their plan shall be submitted to the park manager in writing before Livestock can be brought on to property. This plan cannot exceed 60 AUMs. If grazing management concerns arise during the course of this Agreement, the Park Manager and the Concessionaire will discuss such concerns during the annual meeting and, if necessary, rewrite the grazing management plan to address such concerns.

Capacity. Concessionaire shall not graze more than the number of Head/AUMs specified, or the number of Head/AUMs established at the annual meeting. IDPR may require a specific counting at the time of ingress to the Premises or at some time during the grazing period.

Animal Unit Month (AUM). Shall mean; The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) horse is considered one and one-half (1.5) AUM.

Adjustment. IDPR reserves the right to adjust the number of animal units and the time period to be grazed, after an annual review, either for the purpose of correcting adverse effects on the Premises or as may be necessary to more fully utilize the available resources.

Control of Livestock. Concessionaire shall keep livestock confined to the Premises.

Concessionaire shall check livestock and inspect the Premises at least three (2) times per week to ensure all fences, gates, corrals, structures, and facilities are in good working order and to ensure that no livestock are outside the Premises. Livestock found outside shall be removed by the Concessionaire as soon as practical, but in no case longer than four (4) hours. Any IDPR personnel

and/or equipment utilized to control, remove, replace, round-up, or clean up after (Manure)

Concessionaire's livestock, through Concessionaire's fault or neglect, shall be reimbursed at a cost to IDPR of fifty dollars (\$50) per hour for personnel and thirty dollars (\$30) per hour for equipment.

Livestock Removal upon Overgrazing. IDPR reserves the right to have the livestock removed from some or all of the Premises within seventy-two (72) hours of written notice (3 days) if IDPR determines the area is being overgrazed.

Grazing Management Practice in Grizzly Bear Habitat. Grazing lands made available on Harriman State Park of Idaho have been identified by the State of Idaho Yellowstone Grizzly Bear Management Plan as lands adjacent to the grizzly bear Primary Conservation Area (PCA). This area is described as "lands outside the (PCA) where the habitat is of value to grizzly bears and where the population is likely to expand, primarily on contiguous public lands." Where grizzly bear occupancy occurs outside the PCA, or is anticipated and is acceptable (as defined in State grizzly bear management plans and Federal Land Management Plans), minimization of bear/human conflicts will receive high management priority. Management direction will accommodate and incorporate grizzly bear needs with other land use practices, as possible. Concessionaire's full cooperation in meeting grizzly bear management goals and objectives of the State of Idaho Yellowstone Grizzly Bear Management Plan is a condition of this Concession Agreement. The following measures will be taken on Harriman State Park of Idaho:

1. Temporary cessation or modification of permitted livestock grazing activities may be required to resolve human-livestock-grizzly bear conflict situations.
2. Livestock carcasses will be disposed of within 24 hours after they are discovered. Disposal may include removing the carcass from the area or burying at least two (2) feet underground.
3. Human foods, refuses, and prepared livestock or pet foods associated with the livestock operation will be made unavailable to grizzly bear through proper storage, handling, and disposal. Proper storage includes: (1) inside a bear-proof container, (2) suspended at least ten (10) feet clear of the ground at its lowest point and at least four (4) feet horizontally from adjacent posts or trees, (3) inside a hard-sided vehicle or trailer, or (4) other methods approved by the Park Manager. The exception is when the food is being eaten or prepared for eating, or when food and similar organic matter is being transported.
4. Grazing of food-producing sites important to the grizzly bear may be restricted. These sites will be identified by the Park Manager.
5. Livestock depredation believed to be associated with bears will be reported within 24 hours to the Park Manager.
6. Any observation of grizzly bear or grizzly bear signs will be reported to the Park Manager as soon as practical.
7. Any action taken by the Lessee or his agent that violates the Endangered Species Act will be grounds for cancellation of the lease.

8. Unburnable human foods, garbage, or other refuse will be carried off the property as often as practical.

7. **IMPROVEMENTS.** In addition to Section 11, IMPROVEMENTS, of Attachment A, Concessionaire agrees to maintain all improvements in their existing condition at the commencement of the Agreement term, subject to normal wear and tear, including but not limited to all buildings, facilities, utilities, fencing, corrals, ditches, and equipment; and shall provide for security and protection during the entire Agreement period when occupied by Concessionaire.
 - A. **Damage.** Concessionaire shall be responsible for all damages to the Premises or improvements thereon that are directly attributable to the Concessionaire or its employees during the term of this Agreement.
 - B. **Property Destruction & Damages:** All damages caused by Concessionaire, including by Concessionaire's livestock and vehicles, to fences, gates, corrals, structures, and facilities on Harriman State Park of Idaho shall be fixed or replaced by Concessionaire at Concessionaire's sole expense. IDPR shall not provide any equipment, supplies or man power to fix any damages caused by the Concessionaire. All repairs must be made to the satisfaction of the Park Manager.
 - C. **Safety.** It is the Concessionaire's responsibility to keep the concession premises safe. The Concessionaire shall immediately notify IDPR of any unsafe condition of the Premises, as well as any unsafe practices occurring thereon, and work with IDPR to correct that practice or condition.
 - D. **Security:** The Concessionaire shall be responsible for all security and surveillance of the Premises. The Concessionaire may install at its own expense any legal device or equipment designed for the purpose of protecting the Premises from theft, burglary or vandalism provided that prior, written approval is obtained from IDPR.
8. **INSURANCE;** In addition to Section 12, INSURANCE, of Attachment A, the following shall apply:

A copy of all Required Certificates of Insurance, or certified endorsements shall be provided to the Park Manager each year by May 1st and/or before opening for business. Every three years, the liability insurance coverage shall be reviewed by Risk Management and IDPR and may result in an increase in coverage.
9. **LICENSES, PERMITS AND PLANS:** In addition to Section 21, Attachment A, the following shall apply:
 - A. All license, permits and certificates shall be acquired by May 1st of each year, or before opening for business, and/or guiding trips. Copies shall be kept on file, at the Premises, and available for inspection.
 - B. Concessionaire, and its required employees designated as lead guides on each ride, **must be licensed with the Idaho Outfitters and Guides Licensing Board.** All Concessionaire employees must also abide by guidelines of the Idaho Outfitters and Guides Licensing Board. Concessionaire

must provide IDPR with proof of above licensure, prior to conducting guided horseback rides each operating season.

- C. Concessionaire, and its employees, must be **currently certified in First Aid and CPR**. The Concessionaire must provide IDPR with proof of above certification prior to conducting guided horseback rides each operating season.
- D. The Concessionaire must obtain a **current Special Use Permit from the Caribou-Targhee National Forest** for use of forest trails within Harriman Wildlife Refuge, and pay all applicable fees and charges for their use. The Concessionaire must provide IDPR proof of the current Special Use Permit.
- E. The Harriman State Park of Idaho Master Plan, Caribou-Targhee National Forest and Harriman State Park Special Use Permit for Trail Management, and Caribou-Targhee National Forest Special Use Permit for Horseback Rides within the Harriman Wildlife Refuge are incorporated herein by reference and made a part of the terms and requirements of this Agreement.

10. BONDING:

- A. Concessionaire is required to be bonded to the State of Idaho for the benefit of the person or persons employing the licensee and in a form approved by the Idaho Outfitters and Guides Licensing Board in the sum of ten thousand dollars (\$10,000.00), as stated in Idaho Code § 36-2108. To ensure continuing and faithful performance of this Agreement, the Concessionaire must include IDPR as a rider on this bond, or must secure a separate bond, which names IDPR. The Concessionaire must provide IDPR with a current copy of said bond.

11. UTILITIES AND MAINTENANCE: Notwithstanding Section 23, UTILITIES, of Attachment A:

The CONCESSIONAIRE shall be responsible for, and bear all costs of, all services, utilities and the maintenance of the concession premises.

12. PROPERTY TAX. In addition to Section 25 TAXES of Attachment A; Concessionaire shall pay 7.6% annually for the real property taxes levied against 2500 acres, for property taxes applicable to the Premises utilized (190 acres). Concessionaire shall pay such taxes directly to Fremont County. Final payments will be due following the operating season or before December 15th at the annual meeting, or as otherwise required by Fremont County.

13. ENFORCEMENT: The Park Manager of Harriman State Park of Idaho has authority to enforce this agreement on behalf of IDPR and may authorize other IDPR employees to help administer this agreement.

14. **ANNUAL MEETINGS:** Notwithstanding Section 28 of Attachment A, IDPR and Concessionaire shall meet twice annually; prior to and after the operating season. During such twice-annual meetings IDPR and Concessionaire shall agree upon an annual operating plan for the following year that establishes methods of operation, seasons, and maintenance of corrals and fences, and charges to be paid by the Concessionaire including, but not limited to, charges such as taxes, assessments, utilities, additional grazing fees, and with the purpose of optimizing the efforts of the Concessionaire and their staff in providing certain services to park visitors and supporting the mission of the park and IDPR.
15. **ENVIRONMENTAL, SAFETY AND SANITARY REQUIREMENTS.**
- A. **No Hazardous Materials.** Concessionaire shall neither commit nor permit the use, placement, transport, or disposal of any hazardous waste, including, but not limited to, petroleum products, such as oil, gasoline, or any other substance that is or is suspected to be a hazardous substance or material on the Premises except the customary use associated with weed and pest control, machinery, equipment, and vehicles. Concessionaire shall be responsible, and shall pay all costs for the removal or other appropriate remedial action regarding any hazardous waste, substances, or materials which Concessionaire may have caused to be introduced on the Premises. Any such remediation or removal or storage must be conducted in accordance with applicable federal, state, or local law, regulation, rule, or ordinance, including, where, applicable, a consent order for remediation with the Idaho Department of Environmental Quality.
 - B. **Fire and Safety Regulations.** Concessionaire shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances for fire protection and prevention. Concessionaire agrees to keep the Premises free from fire hazards as determined by IDPR. Concessionaire is prohibited from burning garbage or household trash and any burning on the land, including the burning of wood, weeds, or other debris requires the prior written permission of IDPR.
 - C. **Sanitary Requirements.** Concessionaire shall not dispose of sewage except in conformity with applicable federal, state, and local law, rules, and regulations pertinent to Concessionaire's use and shall dispose of sewage on the Premises only if specifically authorized by IDPR. The Concessionaire shall not store trash on the Premises nor transport trash, garbage, litter, or debris onto the Premises. Concessionaire shall dispose of all trash, garbage, and carcasses in conformity with all legal requirements. Carcasses shall not be disposed of on the Premises or upon any other property of Harriman State Park of Idaho. Concessionaire is responsible for all costs associated with sewage, garbage, and litter disposal.
 - D. **Noxious Weeds.** The Concessionaire shall cooperate with IDPR or any other agency authorized to undertake programs for control or eradication of noxious weeds. Concessionaire shall take measures to control noxious weeds on the Premises in accordance with Title 22, Chapter 24, Idaho Code, except those resulting from activities beyond the Concessionaire's control. Costs for control of noxious weeds on the Premises shall be the responsibility of the Concessionaire, unless otherwise provided for in the Special Terms and Conditions. The Concessionaire shall ensure that prior to

moving onto the Premises that all equipment is free of noxious weeds and their seeds as defined by the Idaho Department of Agriculture and local Coordinated Weed Management Area. Cleaning of contaminated equipment and vehicles shall not take place on the Premises or any other state park land. All straw and forage used for livestock feed, with the exception of that grown on the Premises, must be certified in accordance with the Idaho Department of Agriculture Forage and Straw Certification Rules (IDAPA 02.06.31) and must be certified as Idaho State Noxious Weed Free.

16. **SIGNS:** In addition to Section 19, SIGNS AND ADVERTISING, of Attachment. A, the following applies: IDPR may place its own signs within the Premises, provided that said signs do not interfere with the reasonable business activities of the Concessionaire.
17. **NOTICES.** Notwithstanding, Section 37, NOTICES, of Attachment A, notice can also be given and delivered by e-mail, with copies kept for verification, and Notices to IDPR can also be addressed to Harriman State Park and the Park Manager.
18. **WATER RIGHTS.** Use of existing water rights held by IDPR shall be in accordance with the approval and directions of the Park Manager.